

Copies: SPDES File	Facility ID No.	: NY- 010 9991
Region #4		
Mr. Adamczyk - BWFD	Effective Date (EDP)	: May 1, 1982
Mr. Pulaski - BWFD-Tech. Services		
Rensselaer Co. H.D.	Expiration Date (ExDP)	: May 1, 1987

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES)  
DISCHARGE PERMIT

Special Conditions  
(Part I)

This SPDES permit is issued in compliance with Title 8 of Article 17 of the Environmental Conservation Law of New York State and in compliance with the Clean Water Act, as amended, (33 U.S.C. §1251 et. seq.) (hereinafter referred to as "the Act").

Permittee Name: Oak Material Groups, Inc.

Permittee Street: McCaffrey St.

Permittee City: Hoosick Falls State: NY Zip Code: 12090

is authorized to discharge from the facility described below:

Facility Name: Fluorglass Division

Facility Location (C,T,V): Hoosick (T) County: Rensselaer Co.

Facility Mailing Address (Street): River Road, Plant 2

Facility Mailing Address (City): Hoosick Falls State: NY Zip Code: 12090

into receiving waters known as:

Groundwaters GA

in accordance with the effluent limitations, monitoring requirements and other conditions set forth in this permit.

This permit and the authorization to discharge shall expire on midnight of the expiration date shown above and the permittee shall not discharge after the expiration date unless this permit has been renewed, or extended pursuant to law. To be authorized to discharge beyond the expiration date, the permittee shall apply for permit renewal as prescribed by Sections 17-0803 and 17-0804 of the Environmental Conservation Law and Parts 621, 752, and 755 of the Departments' rules and regulations.

By Authority of William L. Garvey, P.E., Chief, Permit Administration Section  
Designated Representative of Commissioner of the  
Department of Environmental Conservation

3/17/82

Date

William L. Garvey

Signature

Final EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

During the period beginning May 1, 1982  
and lasting until May 1, 1987  
the discharges from the permitted facility shall be limited and monitored by the  
permittee as specified below:

<u>Outfall Number &amp; Effluent Parameter</u>	<u>Discharge Limitations</u>		<u>Units</u>	<u>Monitoring Reqmts.</u>	
	<u>Daily Avg.</u>	<u>Daily Max.</u>		<u>Measurement Frequency</u>	<u>Sample Type</u>
001 Process Flow					
Dissolved Solids, Total		1000	mg/l	Monthly	Grab
pH (6.5 - 8.5) range			SI	Monthly	Grab

NOTES

1. All concentrated wastes are to be held and hauled.
2. Approximate flow is 1900 gal/day.

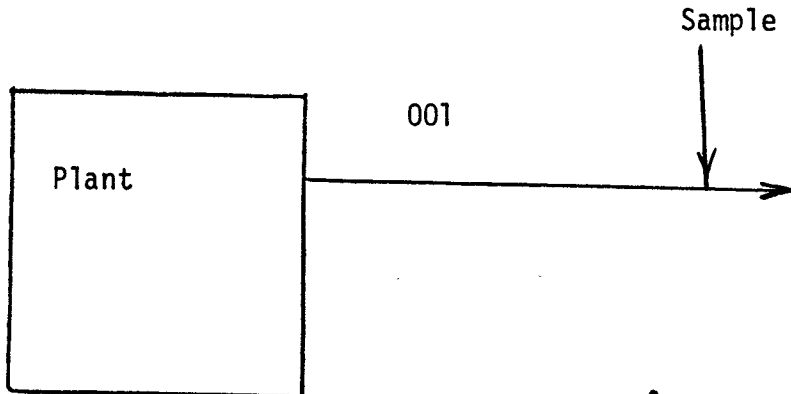
Definition of Daily Average and Daily Maximum

The daily average discharge is the total discharge by weight or in other appropriate units as specified herein, during a calendar month divided by the number of days in the month that the production or commercial facility was operating. Where less than daily sampling is required by this permit, the daily average discharge shall be determined by the summation of all the measured daily discharges in appropriate units as specified herein divided by the number of days during the calendar month when the measurements were made.

The daily maximum discharge means the total discharge by weight or in other appropriate units as specified herein, during any calendar day.

Monitoring Locations

Permittee shall take samples and measurements to meet the monitoring requirements at the location(s) indicated below: (Show locations of outfalls with sketch or flow diagram as appropriate).



a) The permittee shall also refer to the General Conditions (Part II) of this permit for additional information concerning monitoring and reporting requirements and conditions.

b) The monitoring information required by this permit shall be summarized and reported by submitting a completed and signed Discharge Monitoring Report form once every 3 months to the Department of Environmental Conservation and other appropriate regulatory agencies at the offices specified below. The first report will be due no later than August 28, 1982. Thereafter, reports shall be submitted no later than the 28th of the following month(s): November, February, May, August.

Water Division  
New York State Department of Environmental Conservation  
50 Wolf Road - Albany, New York 12233

New York State Department of Environmental Conservation  
Regional Engineer - Region #4  
2176 Guilderland Avenue  
Schenectady, New York 12306

☐ (Applicable only if checked):

Dr. Richard Baker, Chief - Permits Administration Branch  
Planning & Management Division  
USEPA Region II  
26 Federal Plaza  
New York, New York 12078

c) If so directed by this permit or by previous request, Monthly Wastewater Treatment Plant Operator's Reports shall be submitted to the DEC Regional Office and county health department or county environmental control agency specified above.

d) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

e) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Reports.

f) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

g) Unless otherwise specified, all information submitted on the Discharge Monitoring Form shall be based upon measurements and sampling carried out during the most recently completed reporting period.

h) Blank Discharge Monitoring Report Forms are available at the above addresses.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES)  
DISCHARGE PERMIT

GENERAL CONDITIONS  
(PART II)

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PART II - GENERAL CONDITIONS

1. GENERAL PROVISIONS

- a. A determination has been made on the basis of a submitted application, plans, or other available information, that compliance with the specified permit provisions will reasonably assure compliance with applicable water quality standards. Satisfaction of permit provisions notwithstanding, if operation pursuant to the permit causes or contributes to a condition in contravention of State water quality standards, or if the Department determines, on the basis of notice provided by the permittee and any related investigation, inspection or sampling, that a modification of the permit is necessary to assure maintenance of water quality standards or compliance with other provisions of ECL Article 17, or the Act, the Department may require such a modification and may require abatement action to be taken by the permittee and may also prohibit the noticed act until the permit has been modified.
- b. All discharges authorized by this permit shall be consistent with the terms and conditions of this permit; facility expansions, production increases, decreases, or process modifications which result in new, increased or decreased discharges of pollutants must be reported by submission of a new SPDES application or, if such new, increased, or decreased discharge does not violate the effluent limitations specified in this permit, by submission to the permit issuing authority of notice of such new or increased discharges of pollutants (in which case the permit may be modified to specify effluent limitations for any pollutants not identified and limited herein); the discharge of any pollutant not identified and authorized or the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit.
- c. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- d. If the discharge(s) permitted herein originate within the jurisdiction of an interstate water pollution control agency, then the permitted discharge(s) must also comply with any applicable effluent standards or water quality standards promulgated by that interstate agency.
- e. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Environmental Conservation Law and the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
- f. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.
- g. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- h. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost.
- i. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- j. The Clean Water Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$100,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307, or 308 of the Clean Water Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or both.
- k. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
1. The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

2. SPECIAL REPORTING REQUIREMENTS FOR EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURAL DISCHARGERS

- a. All existing manufacturing, commercial, mining and silvicultural dischargers must notify the Department as soon as they know or have reason to believe:
  1. That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels";
    - (i) One hundred micrograms per liter (100 µg/l);

- (ii) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4 dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
  - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.53(d)(7) (effluent characteristics) or 40 CFR 122.53(d)(10) (potential discharges); or
  - (iv) The level established by the Department in accordance with 40 CFR 122.62(f) (new notification level).
2. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under 40 CFR 122.53(d)(9) (used or manufactured toxics).

### 3. EXCLUSIONS

- a. The issuance of this permit by the Department and the receipt thereof by the Applicant does not supersede, revoke or rescind an order or modification thereof on consent or determination by the Commissioner issued heretofore by the Department or any of the terms, conditions or requirements contained in such order or modification thereof.
- b. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining other assent required by law for the discharge authorized.
- c. This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.
- d. Oil and hazardous substance liability. The imposition of responsibilities upon, or the institution of any legal action against the permittee under Section 311 of the Clean Water Act shall be in conformance with regulations promulgated pursuant to Section 311 governing the applicability of Section 311 of the Clean Water Act to discharges from facilities with NPDES permits.

### 4. MODIFICATION, SUSPENSION, REVOCATION

- a. If the permittee fails or refuses to comply with any requirement in an SPDES permit, such noncompliance shall constitute a violation of the permit for which the Commissioner may modify, suspend, or revoke the permit or take direct enforcement action pursuant to law. When, at any time during or prior to a period for compliance, the permittee announces or otherwise lets it be known, or the Commissioner on reasonable cause determines, that the permittee will not make the requisite efforts to achieve compliance with an interim or final requirement, the Commissioner may modify, suspend or revoke the permit and take direct enforcement action pursuant to law, without waiting for expiration of the period for compliance with such requirements.
- b. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:
  - 1. Violation of any provision of this permit; or;
  - 2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts at any time; or materially false or inaccurate statements or information in the application or the permit; or;
  - 3. A change in any physical circumstances, requirements or criteria applicable to discharges that requires either a temporary or permanent reduction or elimination of the permitted discharges, such as:
    - (i) standards for construction or operation of the discharging facility,
    - (ii) the characteristics of the waters into which such discharge is made,
    - (iii) the water quality criteria applicable to such waters,
    - (iv) the classification of such waters, or
    - (v) effluent limitations or other requirements applicable pursuant to the Act or State Law.
  - 4. A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, revocation and reissuance, or suspension.
- c. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Clean Water Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

## 5. REPORTING NONCOMPLIANCE

- a. Anticipated noncompliance. The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- b. Twenty-four hour reporting. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
- c. 1. The following shall be included as information which must be reported within 24 hours under paragraph (b.) above:
  - (i) Any unanticipated bypass which violates any effluent limitation in the permit;
  - (ii) Any upset which violates any effluent limitation in the permit;
  - (iii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours.
2. The Department may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
- d. Other noncompliance. The permittee shall report all instances of noncompliance not otherwise required to be reported under this section or other sections of this permit, when its Discharge Monitoring Reports are submitted. Such reports shall contain the information listed in paragraph (b.) above.
- e. Duty to mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

## 6. INSPECTION AND ENTRY

- a. The permittee shall allow the Commissioner of the Department, the EPA Regional Administrator, or their authorized representatives, upon the presentation of credentials and other documents as may be required by law, to:
  1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
  2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
  3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
  4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act or Environmental Conservation Law, any substances or parameters at any location.

## 7. TRANSFER OF PERMIT

- a. This permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act or Environmental Conservation Law.
- b. Transfers by modification. Except as provided in paragraph (c.) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary under the Clean Water Act.
- c. Automatic transfers. As an alternative to transfers under paragraph (b.) of this section, any SPDES permit may be automatically transferred to a new permittee if:
  1. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date in paragraph (c.)(2.) of this section;
  2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
  3. The Department does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (c.)(2.) of this section.



d. The terms and conditions of this permit are binding on the successors or assigns in interest of the original permittee.

e. The Department may require the new permittee to submit a new application.

#### 8. PERMIT RENEWAL

a. Any permittee who wishes to continue to discharge after the expiration date of a permit shall apply for renewal of its permit no later than 180 days prior to the permit's expiration date (unless permission for a later date has been granted by the Department) by submitting any forms, fees, or supplemental information which may be required by the Department. Upon request, the Department shall provide the permittee with specific information concerning the forms, fees, and supplemental information required.

b. When a permittee has made timely and sufficient application for the renewal of a permit or a new permit with reference to any activity of a continuing nature, the existing permit does not expire until the application has been finally determined by the Department, and, in case the application is denied or the terms of the new permit limited, until the last day for seeking review of the Department order or a later date fixed by order of the reviewing court, provided that this subdivision shall not affect any valid Department action then in effect summarily suspending such permit.

#### 9. SPECIAL PROVISIONS - NEW OR MODIFIED DISPOSAL SYSTEMS

a. Prior to construction of any new waste disposal system or modification which would materially alter the volume of, or the method or effect of treating or disposing of the sewage, industrial waste or other wastes, from an existing waste disposal system, the Permittee shall submit to the Department or its designated field office for review, an approvable engineering report, plans, and specifications which have been prepared by a person or firm licensed to practice Professional Engineering in the State of New York.

b. The construction of the above new or modified disposal system shall not start until the Permittee receives written approval from the Department or its designated field office.

c. The construction of the above new or modified disposal system shall be under the general supervision of a person or firm licensed to practice Professional Engineering in New York State, and upon completion of construction that person or firm shall certify to the Department or its designated field office that the system has been fully completed in accordance with the approved engineering report, plans and specifications, permit and letter of approval.

d. The Department and its designated field offices review wastewater disposal system reports, plans, and specifications for treatment process capability only, and approval by either office does not constitute approval of the system's structural integrity.

#### 10. MONITORING RECORDING AND REPORTING

##### 10.1 GENERAL

a. The permittee shall comply with all recording, reporting, monitoring and sampling requirements specified in this permit and such other additional terms, provisions, requirements or conditions that the Department may deem to be reasonably necessary to achieve the purposes of the Environmental Conservation Law, Article 17, the Act, or rules and regulations adopted pursuant thereto.

b. Samples and measurements taken to meet the monitoring requirements specified in this permit shall be representative of the volume and nature of the monitored discharge(s). As specified in this permit, composite samples means a flow proportioned sample that is composed of at least 8 aliquots collected at a constant volume or flow interval over the specified compositing period. Grab sample means a single aliquot taken over a period not exceeding 15 minutes.

c. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation to insure accuracy of measurements.

d. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit, shall upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation or by both.

##### 10.2 SIGNATORIES AND CERTIFICATION

a. All reports required by this permit shall be signed as follows:

1. For a corporation: by a principal executive officer of at least the level of vice-president; or
2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
3. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official; or by
4. A duly authorized representative of the person described in items (1.), (2.), or (3.). A person is a duly authorized representative only if:

- (i) The authorization is made in writing by a person described in paragraph (a.)(1.), (2.), or (3.) of this section;
- (ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
- (iii) The written authorization is submitted to the Department.

b. Changes to authorization: If an authorization under subparagraph (a.)(4.) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subparagraph (a.)(4.) of this section must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

c. Certification: Any person signing a report shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment".

d. The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

#### 10.3 RECORDING OF MONITORING ACTIVITIES AND RESULTS

a. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

b. Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

#### 10.4 APPLICATION FOR ALTERNATE TEST PROCEDURES

a. The applicant shall submit its application to the Bureau of Monitoring and Assessment, Division of Water, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

b. Unless and until printed application forms are made available, an application for an alternate test procedure may be made by letter in triplicate. Any application for an alternate test procedure shall:

1. Provide the name and address of the responsible person or firm making the discharge (if not the applicant) and the applicable ID number of the existing or pending permit, issuing agency, and type of permit for which the alternate test procedure is requested, and the discharge serial number.
2. Identify the pollutant or parameter for which approval of an alternate testing procedure is being requested.
3. Provide justification for using testing procedures other than those specified in Table I of Part 136 of Title 40 of the Code of Federal Regulations, or as amended.
4. Provide a detailed description of the proposed alternate test procedure, together with references to published studies of the applicability of the alternate test procedure to the effluents in question.

## 11. DISPOSAL SYSTEM OPERATION AND QUALITY CONTROL

### 11.1 GENERAL

a. The disposal system shall not receive or be committed to receive wastes beyond its design capacity as to volume and character of wastes treated, nor shall the system be materially altered as to: type, degree, or capacity of treatment provided; disposal of treated effluent; or treatment and disposal of separated scum, liquids, solids or combinations thereof resulting from the treatment process without prior written approval of the Department of Environmental Conservation or its designated field office.

b. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

c. When required under Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6NYCRR650), sufficient personnel meeting qualifications for operators of sewage treatment works as required therein shall be employed to satisfactorily operate and maintain the treatment works.

d. The permittee shall not discharge floating solids or visible foam.

### 11.2 BYPASS

#### a. Definitions:

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

#### b. Bypass not exceeding limitations:

The permittee may allow any bypass to occur which does not cause effluent limitations to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c.) and (d.) of this section.

#### c. Notice:

1. Anticipated bypass - If the permittee knows in advance of the need for a bypass, it shall submit prior written notice, at least ten days before the date of the bypass.
2. Unanticipated bypass - The permittee shall submit notice of an unanticipated bypass as required in Section 5, paragraph c. of this Part (24 hour notice).

#### d. Prohibition of bypass:

1. Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

- (i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- (iii) The permittee submitted notices as required under paragraph (c.) of this section.

2. The Department may approve an anticipated bypass, after anticipating its adverse effects, if the Department determines that it shall:

- (i) Meet the conditions listed above in paragraph (d.)(1.) of this section;
- (ii) Be scheduled during non-critical water quality periods; and
- (iii) Be carried out in a manner approved by the Department.

### 11.3 UPSET

#### a. Definition:

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

#### b. Effect of an upset:

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (c.) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

#### c. Conditions necessary for a demonstration of upset:

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;
2. The permitted facility was at the time being properly operated; and
3. The permittee submitted notice of the upset as required in Section 5, paragraph c. of this part (24 hour notice).
4. The permittee complied with any remedial measures required under Section 5, paragraph e. of this part.

#### d. Burden of proof:

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

### 11.4 SPECIAL CONDITION - DISPOSAL SYSTEMS WITH SEPTIC TANKS

If a septic tank is installed as part of the disposal system, it shall be inspected by the permittee or his agent for scum and sludge accumulation at intervals not to exceed one year's duration, and such accumulation will be removed before the depth of either exceeds one-fourth (¼) of the liquid depth so that no settleable solids or scum will leave in the septic tank effluent. Such accumulation shall be disposed of in an approved manner.

### 11.5 SLUDGE DISPOSAL

a. The storage or disposal of collected screenings, sludges, other solids, or precipitates separated from the permitted discharges and/or intake or supply water by the permittee shall be done in such a manner as to prevent creation of nuisance conditions or entry of such materials into classified waters or their tributaries, and in a manner approved by the Department. Any live fish, shellfish, or other animals collected or trapped as a result of intake water screening or treatment may be returned to their water body habitat. The permittee shall maintain records of disposal on all effluent screenings, sludges and other solids associated with the discharge(s) herein described. The following data shall be compiled and reported to the Department or its designated field office upon request:

1. The sources of the materials to be disposed of;
2. The approximate volumes and weights;
3. The method by which they were removed and transported;
4. Their final disposal locations.

## 2. CONDITIONS APPLICABLE TO A PUBLICLY OWNED TREATMENT WORKS (POTW)

### 12.1 GENERAL

#### a. All POTWs must provide adequate notice to the Department of the following:

1. Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to sections 301 or 306 of the Clean Water Act if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

3. For purposes of this paragraph, adequate notice shall include information on:

- (i) the quality and quantity of effluent introduced into the POTW; and
- (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

#### 12.2 NATIONAL PRETREATMENT STANDARDS: PROHIBITED DISCHARGES

(Note: The following Section was published in the Federal Register, Vol. 46, No. 18 - Wednesday January 28, 1981. The effective date of the regulation (Part 403) was March 30, 1981)

##### §403.5 National Pretreatment Standards: Prohibited Discharges.

###### a. General prohibitions:

Pollutants introduced into POTW's by an non-domestic source shall not Pass Through the POTW or Interfere with the operation or performance of the works. These general prohibitions and the specific prohibitions in paragraph (b.) of this section apply to all non-domestic sources introducing pollutants into a POTW whether or not the source is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.

###### b. Specific prohibitions:

In addition, the following pollutants shall not be introduced into a POTW:

- 1. Pollutants which create a fire or explosion hazard in the POTW;
- 2. Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.0 unless the works is specifically designed to accommodate such discharges;
- 3. Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in Interference;
- 4. Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a Discharge at a flow rate and/or pollutant concentration which will cause Interference with the POTW.
- 5. Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW Treatment Plant exceeds 40°C (104°F) unless the Approval Authority, upon request of the POTW approves alternate temperature limits.

###### c. When Specific Limits Must be Developed by POTW:

- 1. POTW's developing POTW Pretreatment Programs pursuant to § 403.8 shall develop and enforce specific limits to implement the prohibitions listed in § 403.5(a) and (b).
- 2. All other POTW's shall, in cases where pollutants contributed by User(s) result in Interference or Pass-Through, and such violation is likely to recur, develop and enforce specific effluent limits for Industrial User(s), and all other users, as appropriate, which, together with appropriate changes in the POTW Treatment Plant's Facilities or operation, are necessary to ensure renewed and continued compliance with the POTW's NPDES permit or sludge use or disposal practices.
- 3. Specific effluent limits shall not be developed and enforced without individual notice to persons or groups who have requested such notice and an opportunity to respond.

###### d. Local Limits:

Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with paragraph (c.) above, such limits shall be deemed Pretreatment Standards for the purposes of section 307(d) of the Act.

e. EPA and State Enforcement Actions:

If, within 30 days after notice of an Interference or Pass Through violation has been sent to EPA or the NPDES State to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA or the NPDES State may take appropriate enforcement action.

f. Compliance Deadlines:

Compliance with the provisions of this section is required beginning on March 13, 1981, except for paragraph (b.)(5) of this section which must be complied with by August 25, 1981.